



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Recon Optical, Inc.
File: B-232125
Date: December 1, 1988

DIGEST

1. Protest alleging deficiencies that were apparent on the face of a request for proposals is untimely where the protest was filed after the closing date for receipt of initial proposals.
2. Protest alleging deficiencies that were incorporated into the request for proposals during discussions is untimely where the protest was filed after the closing date for receipt of best and final offers.
3. Contracting agency engaged in meaningful discussions with the protester where the agency held extensive discussions with the protester on several occasions, pointed out to the protester the areas of its initial proposal that were perceived as deficient, and gave the protester an opportunity to revise its proposal and submit a best and final offer.
4. Contracting agency properly considered and reevaluated only the written revisions the protester made to its proposal after discussions were held where the protester was advised during discussions that issues raised were to be addressed in writing and the agency solicited revisions in its request for a best and final offer. An offeror cannot reasonably expect the agency to evaluate revisions that were discussed orally but which were not received in writing.
5. Protest alleging that the contracting agency evaluated offers on requirements that were not stated as evaluation factors in the request for proposals (RFP) is denied where the record shows that the requirements evaluated were set forth in the statement of work and in several other places in the RFP, and the contracting agency properly applied the RFP's evaluation criteria to the work requirements.
6. A contracting agency may properly evaluate a proposal's weaknesses (or strengths) in more than one evaluation factor

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as long as the deficiency (or strength) reasonably relates to more than one evaluation criterion.

7. Contracting agency properly decided to award a contract to the offeror of the higher-priced, higher technically rated proposal where: (1) the solicitation emphasized that award would be made on the basis of a combination of price and technical factors; (2) the awardee's proposal received the highest overall weighted evaluation score and price was included in this computation; and (3) the contracting agency reasonably determined that the significantly higher technical merit of the awardee's proposal was worth the additional cost.

DECISION

Recon Optical, Inc. protests award of a contract to Fairchild Weston Systems, Inc., pursuant to request for proposals (RFP) No. F42600-88-R-60105, issued by the Department of the Air Force to procure an electro-optical long range photography system (E-O LOROPS) for use in reconnaissance work. Under the fixed-price contract, Fairchild also is required to provide warranties, support equipment, engineering data, software, and support and training services, among other items. Recon Optical has alleged a host of improprieties in the solicitation itself, as well as in the evaluation and award process. We find that the issues raised are either untimely or without merit and, therefore, dismiss the protest in part and deny it in part.

The RFP, issued on January 29, 1988, stated that the contract would be awarded on the basis of the Air Force's lowest evaluated price technique. Under this technique, award was to be made to the offeror whose proposal received the highest total weighted score on a combination of price and technical factors listed in the RFP, in descending order of importance, as follows:

- a. Price
- b. System Performance Technical Characteristics
- c. Supportability.

The RFP listed a number of subfactors within the system performance and supportability factors and stated the amount of technical evaluation points that could be received for each subfactor to make up the total technical evaluation score. Price score would be determined by comparing the

offerors' proposed prices to each other and applying a formula that would give higher proposed prices proportionately lower scores.

Three proposals were received by the March 28 closing date and, after initial evaluations, discussions were held with all three offerors. Best and final offers (BAFOs) were solicited on May 27 and received by June 13. BAFOs were evaluated and scored on a weighted scoring scheme to calculate the final total score for each using price and technical factors; Fairchild received the highest total weighted score. However, as Fairchild's total proposed price was \$40,614,857 (\$31,950,000 for the basic contract and \$8,664,857 for the optional items) while Recon Optical's total proposed price was only \$34,033,911 (\$26,111,280 for the basic contract and \$7,922,631 for the optional items), the contracting officer reexamined the proposals and the evaluation reports and determined that Fairchild's proposal was, in fact, significantly superior to Recon Optical's proposal and represented the best overall value to satisfy the Air Force's needs. Accordingly, award was made to Fairchild on July 7. Recon Optical was given a debriefing on July 26, and filed its protest in our Office on July 28.^{1/}

Recon Optical has alleged a multitude of improprieties in virtually every phase of this procurement, from the initial solicitation to evaluation and selection of the awardee. These allegations are so numerous and the arguments in support of them so voluminous that we will not restate and discuss each one here; however, we have considered all of the arguments raised by Recon Optical, the Air Force's response, as well as the rest of the record compiled in this protest.

UNTIMELY ISSUES

Recon Optical alleges that the RFP contained several deficiencies in the evaluation scheme and in the statement of work that led to its proposal receiving less than an optimal evaluation score. The protester complains that the RFP required expensive flight qualification testing of airborne subsystems even though its offered subsystems have

^{1/} Much of the documentation supporting the selection process has been provided to our Office by the Air Force for our in camera review only. Therefore, our discussion will be limited.

been successfully operating in airplanes for many years. The protester also argues that the RFP was inconsistent, because it stated that the evaluation factors were listed in descending order of importance, but elsewhere in the solicitation it was shown that the system performance and supportability factors were to be equally weighted in the evaluation of proposals. Recon Optical also contends that the RFP did not give instructions concerning proposal preparation and the Air Force did not provide any information on other Air Force weapons and reconnaissance systems with which the E-O LOROPS system was required to be compatible.

These objections all involve apparent solicitation defects that, under our Bid Protest Regulations, 4 C.F.R. part 21 (1988), should have been raised before the closing date for receipt of initial proposals. Therefore, these grounds of protest are untimely and will not be considered on their merits. See 4 C.F.R. § 21.2(a)(1).

The protester also objects to several RFP provisions that did not appear in the initial RFP, but were incorporated during discussions, and which the protester believes worked to its prejudice. Recon Optical charges that, in its May 27 request for BAFOs, the Air Force lengthened the required delivery schedule but informed Recon Optical that the technical evaluation of its proposal had already been completed; therefore, Recon Optical argues that it was deprived of an opportunity to revise its proposal in accord with the new schedule and to have the revisions reevaluated. The protester complains that the Air Force also incorporated into the RFP a requirement that proposals use a specific airborne recorder. According to Recon Optical, this recorder can only be obtained from Fairchild, and, in order to meet the RFP's requirement for level 3 engineering data, Recon Optical would have to agree to pay Fairchild an exorbitant price for the data. Thus, Recon Optical contends that the requirements for the recorder and level 3 data unfairly put Recon Optical at a competitive disadvantage relative to Fairchild.

Since these objections concern provisions that were incorporated into the solicitation during the negotiation phase of the procurement and should have been apparent to the protester at the latest upon receipt of the Air Force's May 27 request for BAFOs, the protester should have raised these grounds of protest before the June 13 closing date for receipt of BAFOs in accordance with our timeliness rules. See 4 C.F.R. § 21.2(a)(1). Since these issues were not raised until the July 28 protest to our Office, they are untimely and will not be considered further.

The protester admits that many of the issues raised are untimely, but requests that we consider them under the "good cause" or "significant issue" exceptions to our timeliness rules. See 4 C.F.R. § 21.2(b). Recon Optical has not provided a detailed statement to show why it filed these protest grounds in an untimely manner, so we have no basis to consider invoking the good cause exception. Further, in our opinion, these allegations are directly relevant only to this procurement and do not represent issues of widespread concern to the procurement community generally so as to warrant consideration under the significant issue exception. See Coastal Carolina Maintenance, Inc.--Reconsideration, B-227141.3, July 2, 1987, 87-2 CPD ¶ 9. Accordingly, we see no basis to invoke either exception to our timeliness rules.

DISCUSSIONS

The protester contends that the Air Force did not conduct meaningful discussions by failing to point out perceived deficiencies in Recon Optical's initial proposal. The protester also contends that, when the Air Force did discuss deficiencies with Recon Optical, the Air Force did not evaluate the revisions Recon Optical made nor increase Recon Optical's technical score as a result.

In order for discussions to be meaningful, the contracting agency must furnish offerors information concerning deficiencies in their proposals and give them an opportunity for revision. However, the content and extent of discussions necessary to satisfy the requirement for meaningful discussions are matters of judgment, primarily for determination by procuring officials, and are not subject to question by our Office unless shown to be clearly without a reasonable basis. Technical Services Corp., B-216408.2, June 5, 1985, 85-1 CPD ¶ 640. Agencies are not obligated to afford offerors all-encompassing negotiations. All that is required is that the agency lead offerors into the areas of their proposals that need amplification. Id.

The record shows that the Air Force engaged in extensive discussions concerning Recon Optical's technical proposal on several occasions in April. Of particular significance is a telephone conference which took place on April 28 between representatives of the Air Force and Recon Optical. The transcript of this telephone call shows that the Air Force specifically pointed out to the protester many areas of its proposal that needed to be clarified or were otherwise perceived as deficient by the evaluators. Recon Optical was given ample opportunity during the conversation to explain its position, to clarify its proposal, and to ask questions about any areas of its proposal that were perceived as

deficient by the Air Force. Further, in the May 27 BAFO request, the Air Force enumerated a number of items that Recon Optical was expected to address in its BAFO.

We find that the Air Force adequately fulfilled its obligation to hold meaningful discussions with Recon Optical. For example, the Air Force told Recon Optical that the Air Force was not satisfied with its proposal to test only those parts of its proposed system that had not already been flown in the RF-4C aircraft; the Air Force specifically stated that Recon Optical would be considered noncompliant unless all hardware was to be tested before field deployment. In another example, the parties discussed the Air Force's need to obtain a level 3 engineering reprocurement package for the airborne system; the Air Force specifically asked Recon Optical to find out from its vendors how much level 3 documentation was available on the commercial hardware. In this regard, the Air Force stated that an offeror was required to disclose fully all engineering data developed under this contract but would receive a higher evaluation score for providing data that the offeror had developed at private expense. In yet another example, the Air Force told the protester that the commercial manuals proposed on the recorder were inadequate because they were not in accord with specific required military standards. In our view, the Air Force fulfilled its obligation to lead the protester into those areas of its proposal that needed amplification. Therefore, we find that meaningful discussions were held with Recon Optical.

Concerning Recon Optical's charge that the Air Force did not give it an opportunity to revise its proposal nor take into account those revisions Recon Optical made as a result of discussions, the record does not support the charge. First, the record shows that Recon Optical did provide a general response to the discussions in a May 5 letter and the Air Force specifically asked Recon Optical for further revisions in the May 27 BAFO request. Next, the Air Force reports, and the record confirms, that it evaluated all written revisions Recon Optical made in its BAFO, but was unable to reevaluate many of the deficiencies discussed with Recon Optical because Recon Optical never submitted any written revisions in those areas of its proposal. We note that as a result of the revisions that were enclosed Recon Optical's technical score was increased and the contracting officer used that information in choosing the best offer.

Recon Optical alleges that on or about July 10 the contracting officer directed Recon Optical not to submit a revised proposal, but, rather, to rely on the prior discussions between the parties, many of which were oral.

The Air Force denies that such directions were given, and there is nothing in the record to support Recon Optical's allegation. On the contrary, the transcript provided to us by the protester shows that Recon Optical was told during the April 28 discussions to address in writing the issues raised. Furthermore, the May 27 BAFO request specifically solicited revisions and warned that, if revisions were not received by the closing date, the Air Force would consider the offeror's original proposal as its BAFO. Thus, it should have been clear to Recon Optical that written revisions were required and only written changes would be reevaluated as part of the offeror's BAFO. In our view, the protester could not reasonably have expected the agency to reevaluate revisions that were discussed orally but which were not received in writing in the BAFO.

Accordingly, this portion of the protest is denied.

EVALUATION OF PROPOSALS

The protester next alleges that the Air Force failed to disclose in the RFP all of the evaluation factors that would be used in evaluating proposals and that the Air Force did not evaluate proposals in accord with the evaluation factors set forth in the RFP. Recon Optical again alleges a multitude of deficiencies in the evaluation process. We have reviewed all of the evaluation materials in light of the allegations. As the examples discussed below illustrate, we find the protester's arguments to be without merit.

First, the protester contends that the evaluators did not abide by the point scoring system in the RFP for evaluating technical proposals in the system performance technical characteristics and supportability factors. The RFP contained a list of the subfactors comprising each technical factor and stated how points would be awarded by the evaluators. For example, after defining the subfactor called "integrated logistics support," the RFP stated that a proposal would receive points on that subfactor as follows:

"Requirements	Points Available
Exceed all requirements	200
Exceed some but not all requirements	150
Meets all requirements	100

Meets some but not all requirements

50

Does not meet any of the requirements

0"

Recon Optical objects to the fact that it and other offerors received points on a graduated or prorated basis instead of receiving one of the exact scores set out in the RFP (200, 150, 100, 50 or 0, in the above example). Recon Optical believes the Air Force evaluators were wrong to give scores that were above or below the figures stated. For example, if a proposal met some but not all requirements in this subfactor, the protester argues the proposal must receive exactly 50 points--no more, no less. In actuality, the evaluators might have given a score of 53 in this example.

In our opinion, the protester's interpretation of the RFP is incorrect. Clearly, the points set out in the RFP were labeled "points available" and, therefore, the figures represented the maximum, but not the only, score a proposal of a particular quality could receive. The evaluation section of the RFP elsewhere stated that each subfactor would be awarded points depending on the "degree of success that a proposal has in meeting or exceeding the requirements in the SOW [statement of work]." As there were 27 evaluators, each of whom could give a different score, the Air Force used the average score given by the evaluators; the average score rarely happened to be one of the exact numbers from the solicitation but it did represent the consensus of the evaluators. We find no impropriety in the evaluators using this approach under the RFP's evaluation scheme. Furthermore, as all proposals were evaluated on the same basis, we fail to see how Recon Optical was prejudiced by this method of evaluation.

Recon Optical next alleges that the Air Force downgraded its proposal in several areas by evaluating factors that were not set forth in the RFP. The protester points out that compatibility with the Advanced Technical Air Reconnaissance System (ATARS), the Navigation and Weapon Delivery System (NWDS), the Joint Services Image Processing System (JSIPS), and the capability to upgrade the proposed E-O LOROPS system to an infrared imaging system were evaluated even though these subfactors were not set forth anywhere in the evaluation section of the RFP.

We find no merit to this allegation. The protester construes the evaluation section too narrowly, as if it were to stand alone without the rest of the RFP to complement it. The RFP was designed to be read and interpreted as a whole, and, therefore, the statement of work and the evaluation section should have been read together as a description of

the Air Force's requirements and how the responses to the RFP would be evaluated. See SelectTech Services Corp., B-229851, Apr. 18, 1988, 88-1 CPD ¶ 375.

The RFP specifically stated that the system proposed "shall be designed to be adaptable to provide for future growth to image in the infrared spectrum." The solicitation also specified in the statement of work and several other places that proposed E-O LOROPS systems must be designed to be compatible with the ATARS, JSIPS, and NWDS systems (among others). Moreover, Recon Optical's BAFO shows that it was aware of the requirement that its system be compatible with NWDS, ATARS, and JSIPS, and also reveals that it was offering an E-O LOROPS system with limited infrared upgrade capability. Obviously, the protester knew that these were Air Force requirements under the RFP and should have expected that its proposal would have been evaluated for compliance with these requirements. Accordingly, we find that the Air Force properly evaluated Recon Optical's proposal on how well it fulfilled the RFP's requirements, and, to the extent that Recon Optical's proposal was less than satisfactory in these areas, the evaluators properly gave the proposal less than the maximum point scores allowed.

Recon Optical complains at great length that many of the evaluation subfactors overlapped, and therefore, if its proposal were perceived as having a deficiency, it would be downgraded in more than one evaluation factor or subfactor. Recon Optical argues that its proposal could not properly be penalized in more than one evaluation subfactor for the same deficiency. We do not agree. The RFP set forth all of the evaluation factors and subfactors and nowhere did it state that a proposal deficiency (or a strength) would not be evaluated in more than one factor. Moreover, an agency properly may penalize an offeror more than once for a single deficiency as long as the deficiency (or strength) reasonably relates to more than one evaluation criterion. See Iroquois Research Institute, 55 Comp. Gen. 787 (1976), 76-1 CPD ¶ 123.

Accordingly, the above allegations provide no grounds to invalidate the award to Fairchild and this portion of the protest is denied.

AWARD TO OTHER THAN THE LOWEST-PRICED OFFEROR

Essentially, Recon Optical argues that it should have been awarded the contract because its proposed price was significantly lower than Fairchild's proposed price. The protester argues that the evaluation of proposals does not

justify award to Fairchild because the proposals of the two firms were substantially equal on technical merit.

The solicitation did not provide for award to the low, technically acceptable offeror; rather, it provided for award to the offeror whose offer represented the combination of technical merit and price most favorable to the government. In a negotiated procurement, the agency is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. Antenna Products Corp., B-228289, Jan. 19, 1988, 88-1 CPD ¶ 43. The agency has the discretion to select a more highly rated technical proposal if, as in this case, it is consistent with the RFP's evaluation scheme. The evaluation of proposals is the function of the procuring agency, requiring the exercise of informed judgment, and it is not our function to conduct a de novo review of proposals or to make an independent determination of their relative merits. We will question a procuring agency's technical evaluation only if the protester shows that the evaluation was clearly unreasonable. Kay and Associates, Inc., B-228434, Jan. 27, 1988, 88-1 CPD ¶ 81.

Here, the RFP stated that award would be based on a combination of price and technical factors. While price was listed as the single most important factor, system performance and supportability were also listed as significant evaluation factors. The RFP did not list the weight to be accorded to any of these factors, but did state that they would be quantified and award would be made to the offeror that obtained the highest overall weighted score.

The Air Force gave price a weight of 40 percent, while system performance and supportability each was weighted at 30 percent. Thus, taken together the technical factors were worth more than the price factor. Even though Recon Optical was given the highest weighted score on price alone, the record shows that, when the weighted evaluation scores for the two technical factors were factored into Air Force's computations, Fairchild received a higher overall evaluation score by a wide margin. In view of the fact that Recon Optical's proposal had a lower proposed price than did Fairchild's proposal, the contracting officer then reexamined the evaluation materials and the proposals, and determined that Fairchild's proposal represented the best overall value to the government and was significantly superior to Recon Optical's offer.

The protester disagrees with virtually every aspect of the Air Force's evaluation; however, the protester's disagreement is not enough to overcome the Air Force

evaluators' reasoned judgment. Although the evaluation documents have not been provided to the protester, we have reviewed all of the materials in camera and are satisfied that the Air Force's decision to award to Fairchild was reasonable and consistent with the RFP's evaluation scheme.

The evaluators and the contracting officer determined that Fairchild's technical proposal was far superior to Recon Optical's in a number of ways. Some of the most significant technical advantages were:

- Fairchild's design was more mature than Recon Optical's; Fairchild's techniques, based on their sensors and optics, combined with their excellent record of past performance, gave Fairchild a large advantage in reliability. Higher reliability was also expected to result in savings in maintenance and operational costs.

- Fairchild's system will be totally compatible with ATARS; Fairchild uses the same equipment (for example, the camera, recorder, and sensor design) as the ATARS system, resulting in decreased support costs. The evaluators believe the Recon Optical system will be more difficult and more costly to integrate with ATARS.

- Fairchild provided a complete reprourement data package with engineering data in military specification format; Recon Optical provided only a limited data package and much of it was not to military specifications, but rather, was commercial data from vendors.

- Fairchild would complete reliability testing at its plant before field deployment of equipment; Recon Optical would test its equipment after deployment in the field.

In sum, in the opinion of the Air Force evaluators, Fairchild proposed an E-O LOROPS system and related support that were far superior to the system and support proposed by Recon Optical. In fact, Fairchild's proposal received an evaluation score on the two technical factors that was more than 50 percent higher than Recon Optical's score. On the other hand, Fairchild's proposed price for the basic contract, plus those options that were to be evaluated under the RFP, was only about 20 percent higher than Recon Optical's proposed price. When the price factor was weighed against the two technical factors (system performance and supportability), the Air Force determined that Fairchild's superior technical merit was worth the higher price.

In view of the fact that the RFP emphasized that technical factors were of great importance, that they would be evaluated along with price, and that award would be made to the highest total weighted score (including both price and technical factors), we find that the Air Force's price/tradeoff was reasonable and in conformance with the RFP's stated evaluation scheme. See Systems Engineering Associates Corp., B-231597, Oct. 4, 1988, 88-2 CPD ¶ ____.

Accordingly, this part of the protest is denied.

CONCLUSION

The protest is dismissed in part and denied in part.

John F. Mitchell
for James F. Hinchman
General Counsel